

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

DAPHNE WATKINS	:	
Plaintiff,	:	CIVIL ACTION
	:	
v.	:	CASE NO.
	:	
WAL-MART STORE # 1921, WAL-MART:	:	JURY TRIAL DEMANDED
STORES, INC., MANAGEMENT	:	
ENTITIES 1-10; FICTITIOUS ENTITES;	:	
JANE AND JOHN DOE 1-10; FICTITIOUS:	:	
INDIVIDUALS, XYZ CORPORATION	:	
1-10, FICTITIOUS CORPORATIONS,	:	
ABC PARTNERSHIP 1-10, FICTITIOUS	:	
PARTNERSHIP	:	
Defendants.	:	
	:	

DEFENDANTS', WAL-MART STORE #1921 AND WAL-MART SOTRES, INC.'S
NOTICE OF REMOVAL

Defendants, Wal-Mart Store #1921 and Wal-Mart Stores, Inc. (more properly identified solely as Wal-Mart Store East, LP and hereinafter referred to as “Wal-Mart”) file this Notice of Removal pursuant to 28 U.S.C. § 1441(a) and (b) and §1446(b) and (c) to remove this action from the Superior Court of New Jersey, Law Division, Ocean County, Docket No. OCN-L-1376-17, where it is now pending to the United States District Court for the District of New Jersey, and avers in support thereof as follows:

1. Plaintiff Daphne Watkins initiated this action by filing a Complaint in the Superior Court of New Jersey, Law Division, Ocean County, Docket No. OCN-L-1376-17, on or about May 11, 2017. *See* Plaintiff's Complaint attached hereto as Exhibit "A."

2. The Complaint alleges, *inter alia*, that on or about May 20, 2016, Plaintiff sustained injuries when she tripped and fell into a pot hole in the parking lot at Wal-Mart Store #1921, located at 525 Route 72 West, Manahawkin, New Jersey. See Exhibit “A,” ¶¶1-2.

3. Walmart served its Answer to Plaintiff's Complaint with Affirmative Defenses on September 11, 2017. *See* Wal-Mart's Answer to Plaintiff's Complaint with Affirmative Defenses attached hereto as Exhibit "B."

4. On December 28, 2017, Wal-Mart served a Demand for Statement of Damages upon Plaintiff. *See* Wal-Mart's Demand for Statement of Damages attached hereto as Exhibit "C."

5. On January 11, 2018, Plaintiff forwarded an executed Statement of Damages requesting \$100,000 in compensation for the damages she allegedly sustained in connection with the incident at Wal-Mart. *See* Plaintiff's executed Statement of Damages attached hereto as Exhibit "D."

6. The State Court wherein this action was originally filed is located in Ocean County, New Jersey, which is embraced within this jurisdictional district.

7. Removal from Superior Court of New Jersey, Law Division, Ocean County is proper 28 U.S.C. § 1441(a) and (b), which authorizes the removal of any civil action of which the District Court of the United States has original jurisdiction and if "none of the parties in interest properly joined and served as a defendant is a citizen of the state in which such action is brought."

8. This Court has original jurisdiction under 28 U.S.C. §1332 because the parties are citizens of different states, and the matter in controversy exceeds \$75,000 as set forth below.

9. Plaintiff avers that she resides at 108 Launch Road, Manahawkin, Ocean County, New Jersey. *See* Exhibit "A," ¶ 1.

10. Therefore, Plaintiff is a citizen of the State of New Jersey.

11. Defendant Wal-Mart Store #1921 is not a legal entity.

12. Wal-Mart Stores, Inc., a Delaware corporation with its principal place of business in Bentonville, Arkansas is the ultimate parent entity of Wal-Mart Stores East, LP. It is a citizen of both the States of Delaware and Arkansas.

13. Wal-Mart Stores East, LP, the entity that operated the subject premises on the date of the incident, is a Delaware limited partnership with its principal place of business located in Bentonville, Arkansas. It is a citizen of Delaware. Wal-Mart Stores, Inc., which is a Delaware corporation with its principal place of business in Arkansas, is the ultimate and sole (100%) owner of Wal-Mart Stores East, LP, through various wholly-owned operating entities as follows: Wal-Mart Stores, Inc. (WMSI) is the sole (100%) owner of Wal-Mart Stores East, LLC (WMSE), which is an Arkansas corporation with its principal place of business in Arkansas. Wal-Mart Stores East, LLC, is the sole (100%) owner of WSE Management, LLC, and WSE Investment, LLC, which are both Delaware limited liability companies whose principal places of business are in Arkansas. WSE Investment, LLC, is the 99% owner and limited partner of Wal-Mart Stores East, LP. WSE Management, LLC, is the 1% owner and general partner of Wal-Mart Stores East, LP. Accordingly, Wal-Mart Stores East, LP, is owned by two Delaware limited companies whose sole owner and shareholder is an Arkansas corporation (WMSE), which in turn is wholly-owned by a Delaware corporation (WMSI). None of Wal-Mart Stores East, LP's limited or general partners are citizens of the State of New Jersey, so the requirements of diversity jurisdiction are satisfied.

14. Wal-Mart Real Estate Business Trust is the owner of the property located at 2106 Mt. Holly Road, Burlington, New Jersey.

15. Wal-Mart Real Estate Business Trust is a Delaware corporation with its principal place of business located in Bentonville, Arkansas. Wal-Mart Real Estate Business Trust is an

indirectly, wholly-owned subsidiary of Wal-Mart Stores, Inc. Wal-Mart Real Estate Business Trust's direct parent is Wal-Mart Property Co., a Delaware corporation with its principal place of business in Arkansas, of which Wal-Mart Stores East, LP is the direct parent. As noted above, Wal-Mart Stores East, LP is a citizen of Delaware. Wal-Mart Real Estate Business Trust's sole trustee is John P. Suarez, who is a citizen of Arkansas. Hence, Wal-Mart Real Estate Business Trust is a citizen of the states of Arkansas and Delaware. *Luminent Mortg. Capital, Inc. v. Merrill Lynch & Co.*, 652 F. Supp. 2d 576, 587 (E.D. Pa. August 20, 2009) (holding that "diversity jurisdiction over an unincorporated business trust depends on the citizenship of its trustees and beneficiaries") (citing *Emerald Inv. Trust v. Gaunt Parsippany Partners*, 492 F.3d 192, 201 (3d Cir. 2007)).

16. Therefore, Defendants are citizens of the States of Delaware and Arkansas and the requirements of diversity jurisdiction are satisfied.

17. Citizenship of Plaintiff is completely diverse from Defendants in this matter.

18. Plaintiff's Complaint made a general claim for damages but failed to quantify any amount. *See* Exhibit "A."

19. Prior to the receipt of Plaintiff's Statement of Damages, Wal-Mart could not have reasonably or intelligently concluded from the Complaint or other previously available information that the amount in controversy exceeded the jurisdictional minimum.

20. However, based on Plaintiff's allegations and the \$100,000 demand set forth in her Statement of Damages, the preponderance of the evidence establishes that the matter in controversy exceeds \$75,000 exclusive of interest and costs.

21. When a case is not removable based on the initial pleading, "a notice of removal may be filed within thirty days after the receipt by the defendant, through service or otherwise, of

a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable.” 28 U.S.C. § 1446(b)(3). *See also*, § 1446(c)(3)(A).

22. This Notice of Removal was filed within thirty (30) days of service of the “other paper” in which Plaintiff indicated that the amount in controversy exceeds \$75,000 as set forth herein.

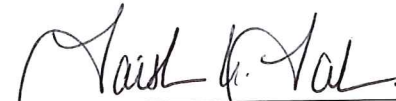
23. Accordingly, the requirements of 28 U.S.C. §§ 1441(a) and (b) and 1446 (b) and (c) are satisfied and the within matter is properly removable.

WHEREFORE, Defendants, Wal-Mart Store #1921 and Wal-Mart Stores, Inc. respectfully request that this State Action be removed from the Superior Court of New Jersey, Law Division, Ocean County, to the United States District Court for the District of New Jersey.

McDONNELL & ASSOCIATES, P.C.

Dated: February 9, 2018

By:



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